

CHAPTER 52-09 OLD-AGE AND SURVIVOR INSURANCE

52-09-01. System established. A retirement system is hereby created and established to become effective July 1, 1947, and to be known as the old-age and survivor insurance system, hereinafter called system.

52-09-02. Purpose of chapter. The purpose of this chapter is to promote economy and efficiency in the public service by providing an orderly means whereby employees who become superannuated may, without hardship or prejudice, be replaced by more capable employees, and to that end providing a retirement system which will provide for the payment of annuities to public employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents, in old age or death, and which by its provisions will improve public employment within the state, reduce excessive personnel turnover, and offer suitable attraction to high grade men and women to enter public service in the state.

52-09-02.1. Administration of chapter - Definition. The retirement board responsible for managing the public employees retirement system under chapter 54-52 shall administer this chapter and the retirement system described in this chapter. The state treasurer shall manage the old-age and survivors' insurance trust fund as provided in section 52-09-06. As used in this chapter, the terms "bureau" and "agency" mean the retirement board of the public employees retirement system, or that board's designated staff.

52-09-03. Administration. The agency is vested with authority to administer the old-age and survivor insurance system. Expenses for the administration of the system must be within the limits of legislative appropriation.

52-09-04. Enforcement of provisions of chapter. Repealed by S.L. 2003, ch. 446, § 6.

52-09-05. Old-age survivors' fund created. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "old-age and survivors' insurance trust fund", hereafter called the old-age survivors' fund. This fund must consist of all moneys collected under this chapter, together with all interest thereon, and must also include all securities and other assets acquired by and through the use of the moneys belonging to this fund and any other moneys that have been paid into this fund.

52-09-06. Custodian and trustee of fund - Investing and disbursing. The treasurer of the state of North Dakota is hereby made the custodian and trustee of the old-age survivors' fund and shall administer the same in accordance with the directions of the bureau. It is the duty of the trustee:

1. To hold said trust funds.
2. To invest any portion of the trust funds that are not needed for current payment of benefits under this chapter and costs of administration of this chapter and chapter 52-10 in bonds, treasury bills, notes, or other securities that are direct obligations of the treasury of the United States; bonds, debentures, or notes issued by a federal farm credit bank, the federal national mortgage association, or the federal home loan mortgage corporation; deposits of the Bank of North Dakota; or deposits of any federally insured bank, federal savings bank, or savings and loan association in an amount not exceeding the maximum insurance available for each deposit and to sell and dispose of the same when needed for the payment of benefits under this chapter and costs of administration of this chapter and chapter 52-10.
3. To disburse such trust funds upon warrants drawn by the state treasurer pursuant to the order of the bureau.

4. To forward to the office of management and budget a monthly abstract showing all of the deposits to and disbursements from such trust fund.

52-09-07. Purposes for which fund may be used - Appropriation. All moneys that are paid or deposited into the old-age survivors' fund are hereby appropriated and made available to the bureau to be used only for the purposes herein provided.

1. To be used by the bureau for the payment of claims for benefits under this chapter. From and after the execution date of the agreement with the United States pursuant to chapter 306 of the 1955 Session Laws extending social security coverage to services covered by this chapter, no benefits may be paid under this chapter except to:
 - a. Persons who are receiving benefit payments or are entitled to benefit payments, under section 52-09-14, by virtue of death or retirement occurring before the agreement execution date, and to dependents and survivors of fully insured persons whenever entitled and eligible. After the agreement execution date, quarters of coverage within the meaning of subsection 7 of section 52-09-20 may not be accrued.
 - b. Persons not entitled to benefits from any other public retirement plan but who would have been eligible under section 52-09-14 before 1960, and dependents and survivors of such fully insured persons whenever entitled and eligible.
 - c. Persons who had terminated covered employment, as defined in subsection 6 of section 52-09-20, before the agreement execution date because of physical disability and who are not entitled to benefits from any other public retirement or disability plan but who would have been eligible under section 52-09-14, and dependents and survivors of such fully insured persons whenever entitled and eligible. The insured, or that person's survivors, shall submit a medical diagnostic opinion establishing that the insured's employment was terminated because of physical disability and that the disability has prevented reemployment.

Notwithstanding this subsection, the effective date referred to for policeman's and firefighter's positions is on and after the day preceding the execution date of the agreement with the United States pursuant to chapter 306 of the 1955 Session Laws extending social security coverage to services covered by this chapter.

2.
 - a. To be used by the bureau to pay a prior service refund to any person who is not receiving any other payment under this chapter, who is employed on the date of the federal-state agreement covering services performed under this chapter and executed pursuant to chapter 306 of the 1955 Session Laws, or who was eligible to vote in the public employees' referendum held on December 20, 1956, pursuant to authorization of chapter 306, or to any employee or the employee's survivor who has nineteen or more quarters of coverage on the date of the federal-state agreement in an amount equal to the employee's individual contribution made between the dates July 1, 1947, and December 31, 1954, after that person makes written application therefor to the bureau.
 - b. A refund may not be paid if the application was received after 1959. A contribution may not be refunded if the wages are used to determine benefit eligibility. If the wages were used for a benefit determination, the person shall repay the amount of the refund or the bureau may deduct the amount from any payment due to the person.
3. Contributions may be paid for employers and employees to the United States pursuant to chapter 306 of the 1955 Session Laws, and pursuant to any federal-state

agreement executed thereunder, and to provide coverage under federal social security retroactive to December 31, 1954, and up to July 1, 1957, for employees subject to that agreement. The amounts are to be transferred and paid into the social security contribution fund established by chapter 306 of the 1955 Session Laws.

4. The legislative assembly may appropriate moneys from the old-age and survivors' fund to be used by the bureau for the purposes of administration of this chapter and may also appropriate from this fund funds for the administration of chapter 52-10. Appropriations from the old-age and survivors' fund for the expenses of administration of chapter 52-10 must be appropriated to job service North Dakota. The bureau and job service North Dakota shall maintain complete and accurate records of all appropriations under this subsection and expenditures made from those appropriations.

52-09-08. Default in taxes - Interest - Action to collect - Levy of tax by political subdivisions. Taxes unpaid on the date on which they are due and payable, as prescribed by the bureau, must bear interest at the rate of one-half of one per centum per month from and after that date until payment plus accrued interest is received by the bureau; provided, that the bureau may prescribe fair and reasonable regulations pursuant to which interest does not accrue with respect to taxes required. The amount of interest imposed may not be less than five dollars. Interest collected pursuant to this section must be paid into the old-age and survivors' fund. A political subdivision, except a school district, a multidistrict special education board, or a center board of an area career and technology center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1 or, for counties, the limitation in subsection 36 of section 57-15-06.7. Within the levy limitations set out in subsection 6 of section 57-15-28.1 and subsection 36 of section 57-15-06.7, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section must be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter must be made out of the school district's general fund established pursuant to section 57-15-14.2.

52-09-09. Rate of contribution. Repealed by S.L. 1999, ch. 440, § 4.

52-09-10. Overpayments. Repealed by S.L. 1999, ch. 440, § 4.

52-09-11. Tax paid deductible in computing net income. Repealed by S.L. 1999, ch. 440, § 4.

52-09-12. Employer to furnish employee statement showing taxes deducted. Repealed by S.L. 1999, ch. 440, § 4.

52-09-13. Employer payments - Manner of payment. Repealed by S.L. 1999, ch. 440, § 4.

52-09-14. Benefit payments.

1. Every individual, who:
 - a. Is a fully insured individual as defined in subsection 7 of section 52-09-20 after June 30, 1947;
 - b. Has attained the age of sixty-five; and
 - c. Has filed application for primary insurance benefits,

is entitled to receive a primary insurance benefit, as defined in subsection 9 of section 52-09-20, for each month, beginning with the month in which such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which that individual dies.

2. a. Every wife, as defined in subsection 13 of section 52-09-20, of an individual entitled to primary insurance benefits, if such wife:

- (1) Has attained the age of sixty-five;
- (2) Has filed application for wife's insurance benefits;
- (3) Was living with such individual at the time such application was filed; and
- (4) Is not entitled to receive primary insurance benefits, each of which is less than one-half of a primary insurance benefit of her husband,

is entitled to receive a wife's insurance benefit for each month, beginning with the month in which she becomes so entitled to such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs: she dies, her husband dies, they are divorced a vinculo matrimonii, or she becomes entitled to receive a primary insurance benefit equal to or exceeding one-half of a primary insurance benefit of her husband.

- b. Such wife's insurance benefit for each month must be equal to one-half of a primary insurance benefit of her husband, except that if she is entitled to receive a primary insurance benefit for any month, such wife's insurance benefit for such month must be reduced by an amount equal to a primary insurance benefit of such wife.

3. a. Every child, as defined in subsection 2 of section 52-09-20, of an individual entitled to primary insurance benefits, or of an individual who died a fully or currently insured individual, as defined in subsections 3 and 7 of section 52-09-20, after June 30, 1947, if such child:

- (1) Has filed application for child's insurance benefits;
- (2) At the time such application was filed was unmarried and had not attained the age of eighteen; and
- (3) Was dependent upon such individual at the time such application was filed, or, if such individual has died, was dependent upon such individual at the time of such individual's death,

is entitled to receive a child's insurance benefit for each month, beginning with the month in which such child becomes so entitled to such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs: such child dies, marries, is adopted, or attains the age of eighteen.

- b. Such child's insurance benefit for each month must be equal to one-half of a primary insurance benefit of the individual with respect to whose wages the child is entitled to receive such benefit, except that when there is more than one such individual, such benefit must be equal to one-half of whichever primary insurance benefit is greatest.

- c. A child must be deemed dependent upon a father or adopting father, or to have been dependent upon such individual at the time of the death of such individual, unless, at the time of such death, or, if such individual was living, at

the time of such child's application for child's insurance benefits was filed, such individual was not living or contributing to the support of such child and:

- (1) Such child is neither the legitimate nor adopted child of such individual;
 - (2) Such child had been adopted by some other individual; or
 - (3) Such child, at the time of such individual's death, was living with and supported by such child's stepfather.
 - d. A child must be deemed dependent upon a mother, adopting mother, or stepparent or to have been dependent upon such individual at the time of the death of such individual, only if, at the time of such death, or, if such individual was living, at the time such child's application for child's insurance benefits was filed, no parent other than such individual was contributing to the support of such child and such child was not living with its father or adopting father.
4. a. Every widow, as defined in subsection 12 of section 52-09-20, of an individual who died a fully insured individual after June 30, 1947, if such widow:
- (1) Has not remarried;
 - (2) Has attained the age of sixty-five;
 - (3) Has filed application for widow's insurance benefits;
 - (4) Was living with such individual at the time of his death; and
 - (5) Is not entitled to receive primary insurance benefits, or is entitled to receive primary insurance benefits each of which is less than three-fourths of a primary insurance benefit of her husband,
- is entitled to receive a widow's insurance benefit for each month, beginning with the month in which she becomes entitled to such insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: she remarries, dies, or becomes entitled to receive a primary insurance benefit equal to or exceeding three-fourths of a primary insurance benefit of her husband.
- b. Such widow's insurance benefit for each month must be equal to three-fourths of a primary insurance benefit of her deceased husband, except that if she is entitled to receive a primary insurance benefit for any month, such widow's insurance benefit for such month must be reduced by an amount equal to a primary insurance benefit of such widow.
5. a. Every widow, as defined in subsection 12 of section 52-09-20, of an individual who died a fully or currently insured individual after June 30, 1947, if such widow:
- (1) Has not remarried;
 - (2) Is not entitled to receive a widow's insurance benefit, and is not entitled to receive primary insurance benefits, or is entitled to receive primary insurance benefits each of which is less than three-fourths of a primary insurance benefit of her husband;
 - (3) Was living with such individual at the time of his death;
 - (4) Has filed application for widow's current insurance benefits; and

- (5) At the time of filing such application has in her care a child of such deceased individual entitled to receive a child's insurance benefit,

is entitled to receive a widow's current insurance benefit for each month, beginning with the month in which she became so entitled to such current insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to receive a child's insurance benefit, she becomes entitled to receive a primary insurance benefit equal to or exceeding three-fourths of a primary insurance benefit of her deceased husband, she becomes entitled to receive a widow's insurance benefit, she remarries, or she dies.

- b. Such widow's current insurance benefit for each month must be equal to three-fourths of a primary insurance benefit of her deceased husband, except that if she is entitled to receive a primary insurance benefit for any month, such widow's current insurance benefit for such month must be reduced by an amount equal to a primary insurance benefit of such widow.
6. a. Every parent, as defined in this subsection, of an individual who died a fully insured individual after June 30, 1947, leaving no widow and no unmarried surviving child under the age of eighteen, if such parent:
 - (1) Has attained the age of sixty-five;
 - (2) Was wholly dependent upon and supported by such individual at the time of such individual's death and filed proof of such dependency and support within two years of such date of death;
 - (3) Has not married since such individual's death;
 - (4) Is not entitled to receive any other insurance benefits under this section, or is entitled to receive one or more of such benefits for a month, but the total for such month is less than one-half of a primary insurance benefit of such deceased individual; and
 - (5) Has filed application for parent's insurance benefits,

is entitled to receive a parent's insurance benefit for each month, beginning with the month in which such parent becomes so entitled to such parent's insurance benefits and ending with the month immediately preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to receive for any month an insurance benefit or benefits, other than a benefit under this subsection, in a total amount equal or exceeding one-half of a primary insurance benefit of such deceased individual.

- b. Such parent's insurance benefit for each month must be equal to one-half of a primary insurance benefit of such deceased individual, except that if such parent is entitled to receive an insurance benefit or benefits for any month, other than a benefit under this subsection, such parent's insurance benefit for such month must be reduced by an amount equal to the total of such other benefit or benefits for such month. When there is more than one such individual with respect to whose wages the parent is entitled to receive a parent's insurance benefit for a month, such benefit must be equal to one-half of whichever primary insurance benefit is greatest.
- c. As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

7. Upon the death, after June 30, 1947, of an individual who died a fully or currently insured individual leaving no surviving widow, child, or parent who would, on filing application in the month in which such individual died, be entitled to a benefit for such month under subsection 3, 4, 5, or 6, an amount equal to three times a primary insurance benefit of such individual must be paid in a lump sum to the following person, or if more than one, must be distributed among them, whose relationship to the deceased is determined by the bureau, and who is living on the date of such determination, to the widow or widower of the deceased, or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who are, under the intestacy law of the state where the deceased was domiciled, entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law, or, if no widow or widower and no such child and no such other person be then living, to the parent or to the parents of the deceased, in equal shares. A person who is entitled to share as distributee with an above-named relative of the deceased shall not be precluded from receiving a payment under this subsection by reason of the fact that no such named relative survived the deceased or of the fact that no such named relative of the deceased was living on the date of such determination. If none of the persons described in this subsection is living on the date of such determination, such amount must be paid to any person or persons, equitably thereto, to the extent and in the proportions that the person or persons shall have paid expenses of burial of the deceased. No payment may be made to any person under this subsection, unless application therefor has been filed, by or on behalf of any such person, whether or not legally competent, prior to the expiration of two years after the death of such individual.
8. An individual who would have been entitled to a benefit under subsection 2, 3, 4, 5, or 6 for any month, had the individual filed application therefor prior to the end of such month, is entitled to such benefit for such month if the individual files application therefor prior to the end of the third month immediately succeeding such month.

52-09-15. Deductions from and additions to benefits.

1. Whenever the total of benefits under section 52-09-14, payable for a month with respect to an individual's wage, is more than twenty dollars and exceeds (a) one hundred fifty dollars, or (b) an amount equal to eighty per centum of the individual's average monthly wage as defined in subsection 1 of section 52-09-20, whichever of such amounts is least, such total of benefits must, prior to any deductions under subsection 4, be reduced to such least amount or to twenty dollars, whichever is the greater.
2. Whenever the benefit or total of benefits under section 52-09-14, payable for a month with respect to an individual's wages, is less than ten dollars such benefit or total of benefits must, prior to any deductions under subsection 4, be increased to ten dollars.
3. Whenever a decrease or increase of the total of benefits for a month is made under subsection 1 or 2, each benefit, except the primary benefit, must be proportionately decreased or increased as the case may be.
4. Deductions, in such amounts and at such time or times as the bureau shall determine, must be made from any payment or payments under this chapter to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits for any month in which:
 - a. A child under eighteen and over sixteen years of age failed to attend school regularly and the bureau finds that attendance was feasible;

- b. A widow entitled to a widow's current insurance benefit did not have in her care a child of her deceased husband entitled to receive a child's insurance benefit; or
 - c. Such individual rendered services for the state of North Dakota or any of its political subdivisions or instrumentalities for wages of more than one hundred dollars.
- 5. If more than one event occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefits may be deducted.
- 6. Any individual in receipt of benefits subject to deduction under subsection 4, or who is in receipt of such benefits on behalf of another individual, because of the occurrence of an event enumerated therein, shall report such occurrence to the bureau prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred. Any such individual having knowledge thereof, who fails to report any such occurrence, shall suffer an additional deduction equal to that imposed under subsection 4.
- 7. A wife or child entitled to a wife's or child's insurance benefit will not be entitled to a benefit for any month in which the individual, with respect to whose wages such benefit was payable, rendered services for the state of North Dakota or any of its political subdivisions or instrumentalities, for wages of more than one hundred dollars.
- 8. The above deductions do not apply to individuals who are seventy-two years of age or over.

52-09-16. Error in payment of amount of benefits - Adjustment - Liability.

- 1. Whenever an error has been made with respect to payments to an individual under this chapter, proper adjustment must be made, under regulations prescribed by the bureau, by increasing or decreasing subsequent payments to which such individual is entitled. If such individual dies before such adjustment has been completed, adjustment must be made by increasing or decreasing subsequent benefits payable with respect to the wages which were the basis of benefits of such deceased individual.
- 2. There may be no adjustment or recovery by the bureau in any case when incorrect payment has been made to an individual who is without fault, and when adjustment or recovery would defeat the purpose of this chapter or would be against equity and good conscience.
- 3. A certifying or disbursing officer may not be held liable for any amount certified or paid by that officer to any person when the adjustment or recovery of such amount is waived under subsection 2 or when adjustment under subsection 1 is not completed prior to the death of all persons against whose benefits deductions are authorized.

52-09-17. Powers and duties.

- 1. The bureau has full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this chapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

2. The bureau is directed to make findings of fact and decisions as to the rights of any individual applying for a payment under this chapter. Whenever requested by any such individual or whenever requested by a wife, widow, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the bureau has rendered, it shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse its findings of fact and such decision. The bureau is further authorized, on its own motion, to hold such hearings and to conduct such investigations and other proceedings as it may deem necessary or proper for the administration of this chapter. In the course of any hearing, investigation, or other proceedings, it may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the bureau even though inadmissible under rules of evidence applicable to court procedure.
3.
 - a. On the basis of information obtained by or submitted to the bureau, and after such verification thereof as it deems necessary, the bureau shall establish and maintain records of the amounts of wages paid to each individual and of the periods in which such wages were paid and, upon request, shall inform any individual, or after his death shall inform his wife, child, or parent of such individual, of the amounts of wages of such individual and the periods of payments shown by such records at the time of such request. Such records are evidence, for the purpose of proceedings before the bureau or any court, of the amounts of such wages and the periods in which they were paid, and the absence of an entry as to an individual's wages in such records for any period is evidence that no wages were paid such individual in such period.
 - b. After the expiration of the fourth calendar year following any year in which wages were paid or are alleged to have been paid to any individual, the records of the bureau as to the wages of such individual for such year and the periods of payment are conclusive for the purpose of this chapter, except as hereafter provided.
 - c. If, prior to the expiration of such fourth year, it is brought to the attention of the bureau that any entry of such wages in such records is erroneous, or that any items of such wages have been omitted from the records, the bureau may correct such entry or include such omitted item in its records, as the case may be. Written notice of any revision of any such entry which is adverse to the interests of any individual, must be given to such individual, in any case when such individual has previously been notified by the bureau of the amount of wages and the period of payments shown by such entry. Upon request in writing made prior to the expiration of such fourth year, or within sixty days thereafter, the bureau shall afford any individual, or after his death shall afford the wife, child, or parent of such individual, reasonable notice and opportunity for hearing with respect to any entry or alleged omission of wages of such individual in such records, or any revision of any such entry. If a hearing is held, the bureau shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall revise its records as may be required by such findings and decision.
 - d. After the expiration of such fourth year, the bureau may revise any entry or include in its records any omitted item of wages to conform its records with tax returns or portions of tax returns. Notice must be given of such revision under such conditions and to such individual as is provided for revisions under subdivision c. Upon request, notice and opportunity for hearing with respect to any such entry, omission, or revision must be afforded under such conditions and to such individuals as is provided in subdivision c, but no evidence may be introduced at any such hearing except with respect to conformity of such records with such tax returns.

- e. Decisions of the bureau under this subsection are reviewable by commencing a civil action in the district court of the state of North Dakota as provided in subsection 7.
4. For the purpose of any hearing, investigation, or other proceeding authorized or directed under this chapter, or relative to any other matter within its jurisdiction hereunder, the bureau shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the bureau. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any political subdivision of the state. Subpoenas of the bureau must be served by anyone authorized by it by delivering a copy thereof to the individual named therein or by registered or certified mail addressed to such individual at the individual's last dwelling place or principal place of business. A certified return by the individual so serving the subpoena setting forth the manner of service, or, in the case of service by registered or certified mail, the return post-office receipt therefor signed by the individual so served is proof of service. Witnesses so subpoenaed must be paid the same fees and mileage as are paid witnesses in the district courts of the state of North Dakota.
5. In case of contumacy by, or refusal to obey a subpoena duly served upon, any person, any district court of the state of North Dakota for the district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the bureau, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence or both; and failure to obey such order of the court may be punished by said court as contempt thereof.
6. No person so subpoenaed or ordered may be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence upon the grounds that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No person may be prosecuted or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence. The provisions of this section do not exempt any person from prosecution or punishment for perjury.
7. Any individual, after any final decision of the bureau made after a hearing to which the individual was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to the individual of notice of such decision or within such further time as the bureau may allow. Such action must be brought in the district court of the state of North Dakota for the district in which the plaintiff resides, or has the plaintiff's principal place of business. As part of its answer the bureau shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the bureau with or without remanding the cause for a rehearing. The findings of the bureau as to any fact, if supported by substantial evidence, are conclusive, and when a claim has been denied by the bureau or a decision is rendered under subsection 2 which is adverse to an individual who was a party to the hearing before the bureau, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection 1, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the bureau made before it files its answer, remand the case to the bureau for further action by the bureau, and may, at any time, on good cause shown, order additional

evidence to be taken before the bureau, and the bureau shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm its findings of fact or its decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which its action in modifying or affirming was based. Such additional or modified findings of fact and decision are reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court is final except that it is subject to review in the same manner as a judgment in other civil actions.

8. The findings and decisions of the bureau after a hearing are binding upon all individuals who were parties to such hearing. No findings of fact or decision of the bureau may be reviewed by any person, tribunal, or governmental agency except as herein provided.
9. Upon final decision of the bureau, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this chapter, the bureau shall certify to the state treasurer the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the bureau, through the state treasurer, shall make payment in accordance with the certification of the bureau; provided, that when a review of the bureau's decision is or may be sought under subsection 3 the bureau may withhold certification of payment pending such review. The state treasurer shall not be held personally liable for any payment or payments made in accordance with a certification by the bureau.
10. When it appears to the bureau that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to the applicant, or for the applicant's use and benefit to a relative or some other person.
11. Any payment made after June 30, 1947, under conditions set forth in subsection 10, to, or on behalf of, a legally incompetent individual without knowledge by the bureau of incompetency prior to certification of payment, if otherwise valid under this chapter, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.
12. The bureau is authorized to delegate to any member, officer, or employee of the bureau designated by it any of the powers conferred upon it by this section and is authorized to be represented by its own attorneys in any court in any case or proceeding arising under the provisions of subsection 5.
13. No application for any benefit under this chapter filed prior to three months before the first month for which the applicant becomes entitled to receive such benefits may be accepted as an application for the purpose of this chapter.
14. The bureau may certify, in its discretion, any two or more individuals of the same family for joint payment of the total benefits payable to such individuals.

52-09-18. Agent and attorney may represent claimant - Regulations - Fees - Penalty. The bureau may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the bureau, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the

presentation of their cases. An attorney in good standing who is admitted to practice before the supreme court of the state is entitled to represent claimants before the bureau.

The bureau may, by rule and regulation, prescribe the maximum fees which may be charged for services rendered in connection with any claim before the bureau under this chapter, and any agreement in violation of such rules and regulations is void. Any person who makes any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee prescribed by the bureau is guilty of a class B misdemeanor.

52-09-19. False statement - Penalty. Repealed by S.L. 1975, ch. 106, § 673.

52-09-20. Definitions. When used in this chapter:

1. "Average monthly wage" means the quotient obtained by dividing the total wages paid an individual before the quarter in which the individual died or became entitled to receive primary insurance benefits, whichever first occurred, by three times the number of quarters elapsing after July 1, 1947, and before such quarter in which the individual died or became entitled, excluding any quarter prior to the quarter in which the individual attained the age of twenty-one during which the individual was paid less than fifty dollars in wages. For the purpose of determining the average monthly wage as provided in this section, an individual employee may at the employee's option disregard or "drop out" not to exceed ten quarters of employment in instances where the total quarterly wages received from employment subject to this chapter did not exceed three hundred dollars and where such wages were received in quarters prior to July 1, 1951. Such quarters of employment as may be dropped out or disregarded by the employee may be considered, however, in determining whether such employee has a sufficient number of quarters of covered employment to become eligible for benefits under this chapter.
2. "Child", except when used in subsection 7 of section 52-09-14, means the child of an individual, and the stepchild of an individual by a marriage contracted prior to the date upon which the individual attained the age of sixty and prior to the beginning of the twelfth month before the month in which the individual died, and a child legally adopted by an individual prior to the date upon which the individual attained the age of sixty and prior to the beginning of the twelfth month before the month in which the individual died.
3. "Currently insured individual" means any individual with respect to whom it appears to the satisfaction of the bureau that the individual has been paid wages of not less than fifty dollars for each of not less than six of the twelve calendar quarters, immediately preceding the quarter in which the individual died.
4. "Employee" means any individual who is in employment as defined in this chapter.
5. "Employer" means the state of North Dakota, the counties, municipalities, and all of the political subdivisions thereof and all of their departments and instrumentalities all hereinafter called political subdivisions excepting only those whose employees are now or may hereafter be covered by a retirement plan in which event such political subdivision may by election come under the provisions of this chapter in accordance with the regulations prescribed by the bureau.
6. "Employment" means any service performed after June 30, 1947, under an employer-employee relationship, under the provisions of this chapter, except:
 - a. Any service performed in the employ of any employer which has as of July 1, 1947, its own retirement plan.
 - b. Any service performed by an employee of the legislative assembly during a legislative session.

- c. Any service performed by an undergraduate student while regularly attending a public school, college, or university for such public school, college, or university.
- 7. "Fully insured individual" means any individual with respect to whom it appears to the satisfaction of the bureau that:
 - a. The individual had not less than one quarter of coverage for each of two of the quarters elapsing after July 1, 1947, and up to but excluding the quarter in which the individual retired after the individual had attained the age of sixty-five, or died, whichever first occurred; or

- b. The individual had at least forty quarters of coverage.

As used in this subsection and in subsection 3, the term "quarter" and the term "calendar quarter" mean a period of three calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first; and the term "quarter of coverage" means a calendar quarter in which the individual has been paid not less than fifty dollars in wages. When the number of quarters specified in subdivision a is an odd number, for purposes of such subdivision such number must be reduced by one. In any case when an individual has been paid in a calendar year four thousand two hundred dollars or more in wages, each quarter of such year following the individual's first quarter of coverage must be deemed a quarter of coverage, excepting any quarter in such year in which such individual dies or becomes entitled to a primary insurance benefit and any quarter succeeding such quarter in which the individual died or becomes so entitled.

- 8. "Political subdivision" includes municipal corporations and counties and other political subdivisions or instrumentalities electing coverage in accordance with the provisions of section 52-09-23.
- 9. "Primary insurance benefit" means the sum of the following:
 - a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
 - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
 - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
 - c. (1) Effective August 1, 2005, nine hundred thirty-three dollars and twenty-eight cents; or
 - (2) Effective August 1, 2006, nine hundred fifty-nine dollars and ninety-four cents.
- 10. "Taxes" means the amount or amounts of money contributed to the fund of the system by the employer and the employee.
- 11. "Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term does not include that part of the remuneration which, after remuneration equal to four thousand eight hundred dollars has been paid to an individual with respect to employment during any calendar year after 1946, is paid to such individual with respect to employment during such calendar year.

12. "Widow", except when used in subsection 7 of section 52-09-14, means the surviving wife of an individual who either:
 - a. Is the mother of such individual's son or daughter; or
 - b. Was married to the individual prior to the beginning of the twelfth month before the month in which the individual died.
13. "Wife" means the wife of an individual who either:
 - a. Is the mother of such individual's sons or daughters; or
 - b. Was married to the individual prior to July 1, 1947, or if later, prior to the date upon which the individual attained the age of sixty.
14. In determining whether an applicant is the wife, widow, child, or parent of a fully insured or currently insured individual for purposes of this chapter, the bureau shall apply such law as would be applied in determining the devolution of intestate personal property under the laws of the state of North Dakota. Applicants who according to such law would have the same status relative to taking intestate personal property as a wife, widow, child, or parent must be deemed such.
15. A wife must be deemed to be living with her husband if they are both members of the same household, or she is receiving regular contributions from him toward her support, or he has been ordered by any court to contribute to her support; and a widow must be deemed to have been living with her husband at the time of his death if they were both members of the same household at the date of his death, or she was receiving regular contributions from him toward her support on such date, or he had been ordered by any court to contribute to her support.
16. Members of the state legislative assembly, officials of the state, city, township, county, and other governmental instrumentalities elected by the vote of the people may be covered by this chapter. Employees who are members of any other retirement system in the state which is maintained in whole or in part by public contributions unless such political subdivision or its instrumentalities as a whole elect to adopt this system are exempt from the provisions of this chapter. Such officials may individually elect to adopt this system of application to the bureau for such coverage. Such coverage may, at the option of the applicant, be made retroactive to January 1, 1950, upon payment by the applicant of the applicant's accrued contribution for the retroactive period. Any such official who has heretofore in good faith made such payment must automatically be covered from January 1, 1950, upon proof of such payment.
17. The masculine form of expression must be deemed to include the feminine.

52-09-21. Refunds.

1. Any individual, who has not been employed in at least half of the twelve quarters immediately preceding the quarter in which the individual terminated the individual's employment, or one-half the quarters elapsing after July 1, 1947, and up to, but excluding the quarter in which the individual terminated the individual's employment may withdraw from the old-age survivors' fund, or the individual's eligible survivor may withdraw from the fund, the employee's individual contributions paid to said fund for such period of employment, without interest. Any individual who receives a refund under this subsection will not be entitled to credit for a benefit determination for any quarter or quarters for which a refund has been paid.

2. Request for refunds from the old-age survivors' fund may be made within thirty days after the date of mailing or delivery of a final statement of wages paid to the employee and not thereafter.
3. Any policeman or fireman covered by a policeman's or fireman's city pension plan and who was also covered under this chapter must be paid a refund, for such employment, upon application before 1960, of the person's individual contribution, without interest, for the period January 1, 1955, to July 1, 1957. No refund will be paid where the policeman's or fireman's wages were transferred to federal social security.
4. Individual teachers, who contributed to both the old-age survivors' fund under chapter 52-09 on a nonteaching position and to the social security administration on a teaching position under an agreement negotiated in accordance with chapter 306 of the 1955 Session Laws, shall upon submitting a written application to the administrator of the old-age survivors' fund be entitled to a refund of the individual's contribution in excess of the maximum payment required under the federal Social Security Act [42 U.S.C. 301 et seq.] for each calendar year on the wages from January 1, 1955, through December 31, 1957, where the old-age survivors' fund received credit from the social security administration for such excess payments as a result of the transfer from the old-age and survivors' insurance system to the federal social security program, provided that such application be received by the administrator of the old-age survivors' fund before 1960.

52-09-22. Benefits unassignable and exempt from legal remedies. The right of any person to any further payment under this chapter is not transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this chapter are subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

52-09-23. When political subdivisions may apply to bureau for coverage. Any political subdivision or the instrumentalities thereof not covered by this chapter may become subject hereto by application to the bureau for such coverage on all or that part of its employees that are not covered by this chapter and by complying with the regulation prescribed by the bureau.

52-09-24. System not subject to general insurance laws and regulations. None of the laws of this state regulating insurance or insurance companies apply to the bureau, or the old-age and survivors' insurance system or any of its funds.

52-09-25. Chapter applies to special charter cities. The provisions of this chapter apply to and are applicable to special charter cities in the state.

52-09-26. Preservation of rights of person in military service - Contribution by employer continued. If any person who is now employed in the public service of the state of North Dakota or any political subdivision thereof and is contributing to the old-age survivors' fund provided for by section 52-09-05 at the time of induction is inducted into the military service of the United States, all rights of such employee and the employee's dependents accrued under the provisions of this chapter must be preserved unimpaired during the continuance of such military service; and if such person, within ninety days after discharge from such military service, resumes the person's status as a public employee, the person shall have full credit for the time of such service the same as if during such time the person had continued in the public service upon the person paying into said fund the sum which the person would have contributed thereto had the person remained in such public service, at the rate of contribution the person was making at the time of such induction.

In the event such employee elects to resume the employee's status and pay into the fund an additional contribution as provided in this section, then the employer, within sixty days after

notice of such election and payment, shall pay into such fund the contributions required to match such payments.

52-09-27. State and political subdivisions may participate in federal old-age benefits. The state of North Dakota, all departments thereof, all political subdivisions thereof, and all instrumentalities and agencies of any of them, shall be and they are hereby authorized, in the discretion of the governing board or authority of each such department, political subdivision, instrumentality, or agency, to participate in the federal old-age benefits provisions of the federal Social Security Act [42 U.S.C. 301 et seq.], as amended, including the acceptance of all benefits provided under title II of said Act [42 U.S.C. 401 et seq.], and the payment of employers' contributions and the deduction of employees' contributions under the provisions of chapter 21 of the federal Internal Revenue Code [26 U.S.C. 3101 et seq.], to the full extent permitted by said Social Security Act [42 U.S.C. 301 et seq.] or any future amendment thereof.